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Remarks

The title has been amended to conform with the amendments to claim 21 which is directed to providing an apparatus for dispensing fluid into a tree.

Claim 21 has been amended by introducing into claim 21 the limitations of claims 20 and 32. Correspondingly, the latter claims have been cancelled. Claim 38 is cancelled as being duplicative of claim 30.

New claim 41 has been added which recites the limitations of claim 21 but with the limitations of claim 30 replacing the concluding limitation of claim 21. Both of these independent claims should now be considered to be novel and inventive.

The Examiner in his Office Action of February 15, 2006 has applied 35 USC 101 as cited against claim 38 on the basis that claim 38 is said to be "in combination with a tree" and this is alleged to constitute non-statutory subject matter.

An online search in the US patent office database for the words "tree" in the field "claims ", in combination with class 47 produces 541 hits. Class 47 as defined in the Manual of Classification as follows:

"CLASS 47, PLANT HUSBANDRY

SECTION I - CLASS DEFINITION

This is the parent class for apparatus and processes employed in treating the earth and its products and includes all inventions relating thereto that have not been especially provided for in other classes."

Clearly, it is permissible to include the presence of the tree as one element in a claim without violating 35 USC 101. A rejection on this ground is therefore inappropriate.

In all events, claim 38 has been deleted as being duplicative of claim 30.

The Examiner has also cited a new reference, U.S. 5,971,950 to López advising that, in combination with Skinkel et al, US publication 2000/0056259, claims 21, 23, 24, 31, 33, and 34 are obvious under 35 USC 103 (a).

The Examiner observes that López is in the same field as the present invention, namely injection devices. The applicant objects that López relates to the medical field whereas the present invention, as now recited in claim 21, is specifically directed to an apparatus for the dispensing of fluid into a tree. Accordingly, López should not be treated as analogous art. On the same basis, Skinkle is not analogous art.

The Examiner had previously referenced Skinkle in the earlier Office Action but had found claims 28, 29 and 32 to be allowable subject matter. The applicant in the last Response relied upon claims beginning with claim 21. Claim 21, as amended in the last Response, incorporated the limitations of previous claims 32 (observed to be allowable) and 22. With these amendments, claim 21 stipulated for a valve/closure wherein:

21i) the valve/closure comprises a self-sealing penetratable plug

The Examiner now asserts that the valve/closure in Skinkle is a self-sealing plug due to the "duck-bill" design 305.

In response, the applicant now amends claim 21 in respect of the valve/closure as follows:

21i) the valve/closure comprises a self-sealing, solid penetratable plug of penetratable elastomeric material

The applicant also amends claim 21 to stipulate further in respect of the character of the nozzle as follows:

in combination with:

e) a nozzle having a bore extending there through, the nozzle being shaped at a first end for communication with the output port and being shaped at its other, second end in the shape for connection with a hole formed in ~~the object~~ a tree into which fluid is to be injected,

wherein.....

ii) the nozzle comprises a needle having a needle bore and needle tip, the needle being positioned at a recessed location within the first end of the nozzle for insertion through the plug for permitting a flow of fluid through the needle, ~~and~~

..... and

iv) the first end of the nozzle has a hammerable outermost end, extending beyond the needle tip, for use in inserting of the nozzle into a tree.

This clearly distinguishes over the cited reference Skinkle in terms of anticipation. Additionally, the following further limitation in claim 21 distinguishes over Skinkle in terms of anticipation:

21iii) the needle ~~has a needle tip for penetrating the penetratable plug and the needle~~ tip is positioned within a recess in the nozzle whereby the needle tip does not extend beyond the first end of the nozzle

The Examiner acknowledges that a recessed needle is not shown in Skinkle but argues that such a recessed needle is shown in López. This is said to render claim 21 "obvious".

The fact that the needle is recessed in Skinkle is not a trivial feature. The nozzle in the present invention is intended to be hammered into an opening in the bark of a tree. Claim 21 has been amended to this effect. Further, López does not show the containment of a needle on a component that is intended to be coupled to a patient. Rather, the contained needle in López is on the supply-side of the interface between the fluid source and the ejection port.

On this basis, it is submitted that a rejection of claim 21 on the basis of 35 103 (a) is not justified. As claim 21 is allowable, all claims dependent thereon are allowable, apart from the independent features that they add.

Claim 41 is a new claim which recites the limitations of claim 21 but with the limitations of claim 30 replacing the concluding limitation of claim 21. The limitations of claim 30 that now terminate claim 41 are as follows:

iv) the second end of the nozzle is tapered for insertion into a hole formed in the outside surface of a tree to provide a jam-fit therein.

This limitation also distinguishes over the references cited as there's no suggestion in respect of such references as to the utility or desirability of having a nozzle with a tapered and.

In the last Response the applicant observed that the Examiner withdrew

Claims 35-37 and 40 from examination as being drawn to a non-elected species on the basis that there was no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the Response that was filed on July 14, 2005. The applicant requests that the withdrawn status of these claims be cancelled and that these withdrawn claims be reinstated and allowed. Such claims depend upon, ultimately, Claim 21 which the should be allowable. The applicant reiterates this request.

On this basis, the applicant believes that this application is now in order for allowance and requests reconsideration of the pending claims as amended.

Respectfully submitted,

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Per: _____



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